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2. Champerty and Maintenance (§ 7*)—Champertous Contracts—Deeds.—A conveyance by devisees of undivided interests in real estate, previously conveyed without authority by the executor, is champertous, where the consideration is nominal, and the grantee, for a further consideration, agreed, in the event of his suing for and recovering the land, to pay to the devisees out of possession an additional sum, not made a charge on the land itself, but merely a personal obligation.

[Ed. Note.—For other cases, see *Champerty and Maintenance*, Cent. Dig. §§ 54-110; Dec. Dig. § 7.* 2 Va.-W. Va. Enc. Dig. 776.]

3. Champerty and Maintenance (§ 7*)—Champertous Contracts—Requisites—"Champerty."—A contract for the purchase of real estate need not stipulate for a division in kind of the land to be recovered in order to make the contract champertous, but it is sufficient if the champertor and the party with whom he contracts are to share in the fruits of a recovery; "champerty" being a bargain with plaintiff or defendant in a suit for a portion of the land or other matters sued for, in case of a successful termination of the suit which the champertor undertakes to carry on at his own expense.

[Ed. Note.—For other cases, see *Champerty and Maintenance*, Cent. Dig. §§ 54-110; Dec. Dig. § 7.* 2 Va.-W. Va. Enc. Dig. 771.

For other definitions, see *Words and Phrases*, vol. 2, pp. 1045-1050; vol. 8, pp. 7598, 7599.]

Error to Circuit Court, Brunswick County.

Ejectment by Walter M. Seward against the Camp Manufacturing Company. There was a judgment granting insufficient relief, and plaintiff brings error, and defendant assigns cross-error. Reversed and rendered.

E. R. F. Wells, for plaintiff in error.

E. R. Turnbull, Jr., and *E. P. Buford*, for defendant in error.

NEWMAN *v.* McCOMB.

June 8, 1911.

[71 S. E. 624.]

1. Divorce (§ 236*)—Alimony—Agreements in Lieu—Remedy.—An action for the recovery of money payable under written agreements, in one of which defendant, during the pendency of an action for divorce brought by plaintiff, agreed to pay plaintiff \$50 per week as alimony and a stated sum as counsel fees, and in the other writing plaintiff waived all marital rights in defendant's property, and released defendant from any demand for permanent alimony, and

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

fixed a day at which the stipulated alimony should cease, is not an action of assumpsit to recover alimony, but an action on the contract.

[Ed. Note.—For other cases, see Divorce, Dec. Dig. § 236.* 2 Va.-W. Va. Enc. Dig. 3.]

2. Divorce (§ 236*)—Alimony—Agreement in Lieu—Pleading—Declaration.—Code 1904, § 2852, provides that an action of debt may be maintained on a writing by which there is any promise or obligation to pay money; and § 3272 provides that on a demurrer, unless it be a plea in abatement, the court shall not regard any defect in the declaration, except the omission of something so essential to the action that judgment according to law could not be given. Plaintiff's declaration, in an action for money as to payment of which defendant was alleged to be in default, was based upon writings, one of which was an agreement between plaintiff and defendant, made during the pendency in another state of an action for divorce, whereby defendant agreed to pay plaintiff alimony, and on another writing in which plaintiff released defendant from any demand for permanent alimony and fixed a day at which the stipulated alimony should cease. Held that, under the Code provisions, the declaration sufficiently stated an action of debt for the recovery of sums payable under the terms of the agreement.

[Ed. Note.—For other cases, see Divorce, Dec. Dig. § 236.* 4 Va.-W. Va. Enc. Dig. 272.]

3. Appeal and Error (§ 1050*)—Review—Harmless Error—Admission of Immaterial Evidence.—In an action to recover sums payable in lieu of alimony, based on writings and stipulations between the parties during the pendency of a divorce action in another state, the admission of evidence as to proceedings had in the divorce case is not prejudicial, since it was immaterial to the issues involved.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4153-4166; Dec. Dig. § 1050.* 1 Va.-W. Va. Enc. Dig. 592.]

4. Limitation of Actions (§ 25*)—Personal Actions—Instruments for Payment of Money.—Under Code 1904, § 2920, relating to limitation of personal actions, an action to recover money in lieu of alimony, based on writings and stipulations made by parties during the pendency of an action for divorce, is barred by the five-year limitation.

[Ed. Note.—For other cases, see Limitation of Actions, Cent. Dig. §§ 118-131; Dec. Dig. § 25.* 9 Va.-W. Va. Enc. Dig. 405.]

5. Trial (§ 251*)—Instructions—Application to Issues.—That a plea which presents no defense is not met with objection or de-

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murrer, but issue is taken thereto, does not require the court to instruct thereon.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 587-595; Dec. Dig. § 251.* 7 Va-W. Va. Enc. Dig. 723.]

Appeal from Circuit Court, Orange County.

Action by Lelia M. McComb against W. G. Newman. Judgment for plaintiff, and defendant appeals. Affirmed.

F. C. Moon, Rixey & Hiden, and Jno. G. Williams, for appellant.

Grimsley & Millcr, for appellee.

BAKER et al. v. BERRY HILL MINERAL SPRINGS CO.

June 8, 1911.

[71 S. E. 626.]

1. Principal and Agent (§ 181*)—Notice to Agent—Constructive Notice.—The rule that knowledge of the agent is knowledge of the principal does not apply where the agent, in order to commit a fraud upon a third person, perpetrates a fraud upon the principal.

[Ed. Note.—For other cases, see Principal and Agent, Cent. Dig. § 690; Dec. Dig. § 181.* 1 Va-W. Va. Enc. Dig. 276; 3 Va-W. Va. Enc. Dig. 568.]

2. Banks and Banking (§ 112*)—Acts of Officers—Fraud.—Where the president of a bank, in seeking to defraud certain persons, told them that the bank would accept their notes, would renew them indefinitely, and under certain circumstances would not enforce payment, the bank is not charged with the knowledge of the president, and therefore, being innocent, may enforce the notes.

[Ed. Note.—For other cases, see Banks and Banking, Cent. Dig. §§ 271, 272; Dec. Dig. § 112.* 2 Va-W. Va. Enc. Dig. 299; 3 Va-W. Va. Enc. Dig. 568.]

3. Banks and Banking (§ 114*)—Authority of Agent—Ratification.—Where the president, seeking to defraud third persons, told them that they could give the bank their note, and such note would not be enforced, and the bank, without knowledge of such promise, discounted the note, giving full value, there was no ratification of the president's acts.

[Ed. Note.—For other cases, see Banks and Banking, Cent. Dig. §§ 277-280; Dec. Dig. § 114.* 2 Va-W. Va. Enc. Dig. 302.]

4. Injunction (§ 26*)—Grounds—Restraining Enforcement of Notes.—The president of a bank, in furthering certain fraudulent schemes of his own, told third persons that the bank would discount their notes secured by certain stock of a corporation which he was

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.